REMARKS

The Examiner objected to claims 40-52 and 59-60 as lacking novelty in view of Nason. It is respectfully submitted that the Examiner's objection should be withdrawn in view of the following remarks.

The claimed invention is directed to a method of conducting an assay for analyzing a biological sample where the device has a capillary chamber, at least one reagent in the capillary chamber and a dynamic filter. The sample is put into fluid communication with the dynamic capillary filter such that a fluid component of the sample is separated from a non-fluid component. The fluid component reacts to reagents in the capillary chamber and is analyzed for reagent changes in order to detect the presence of analyte in the fluid sample.

Nason, on the other hand, discloses a laboratory slide which is concerned with providing monocellular spacing between a lower slide plate and an overlying coverslip. The slide disclosed by Nason has a lower slide plate and upper coverplate or coverslip which is secured to the lower slide plate by means of a bonding agent. The cover slide has four examination chambers. A specimen is drawn in a thin film distribution by capillary action through the examination chamber. In Figure 13, Nason discloses an embodiment that includes beads having a reagent coating which can be used for the purposes of an analyte detection test.

The claimed invention provides the advantage that the assay methodology provides for the separation of liquid and non-liquid components of the sample such as plasma from blood in the assay of a fluid sample. This avoids the disadvantage of having to separate out a cellular components of a fluid sample such as blood, before assaying the sample. The claimed methodology advantageously allows the assay to be used at the point of patient care, and even by an individual patient oneself.

Nason, on the other hand, does not disclose or suggest a methodology involving the use of a dynamic filter in an assay device that would separate a liquid from non-liquid components of a sample. The beads disclosed by Nason serve the simple purpose of bringing a reagent into contact with an analyte. There is no suggestion that these beads could be used as a dynamic

filter. It is therefore submitted that Nason does not teach or suggest the functional advantages of the claimed invention. It is therefore respectfully submitted that claims 40-60 patentably distinguish over Nason.

The Examiner also objected to claims 53-58 as being obvious having regard to Nason in view of Fischer. It is submitted that the Examiner's objection is now moot in that the claimed invention patentably distinguishes over Nason.

The Examiner objected to the limitation "the biochip" in line 2 of claim 51. Applicant has replaced the word "biochip" with the word "device".

A Petition for an Extension of Time requesting an extension of one month for filing the subject response is enclosed.

Favourable consideration and allowance of this application are respectfully requested.

Executed at Toronto, Ontario, Canada, on October 27, 2004.

PETER LEA

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AMK:ck
Encl. Petition for an Extension of Time in duplicate